

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KELLY DWIGHT PRITCHETT,

Defendant-Appellant.

UNPUBLISHED

September 28, 1999

No. 213142

Allegan Circuit Court

LC No. 97-010632 FH

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401) (2)(d)(iii), second offense, MCL 333.7413(2); MSA 14.15(7413)(2). The trial court sentenced defendant to two to eight years' imprisonment. Defendant appeals as of right. We affirm.

Defendant's sole claim of error is that he was denied his right to a fair trial when the trial court allowed evidence of a small metal scale found in defendant's pocket. We disagree.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). Generally, all relevant evidence is admissible. MRE 402; *Starr, supra* at 497. Evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Mills*, 450 Mich 61, 66-68; 537 NW2d 909, mod, remanded 450 Mich 1212, 539 NW2d 504 (1995).

In the present case, defendant denied any knowledge of the marijuana or the scale. A general denial puts all elements of a crime at issue. *Id.* at 69-70. Although the marijuana was not found on defendant's person, it was found under the car seat where defendant was sitting, and witnesses saw defendant lean forward, out of sight, as the car was being stopped by the police. Thus, there was a

connection between defendant and the marijuana. The marijuana was measured out into smaller bags, consistent with marijuana packaged for sale. The scale was relevant, as it tended to show that defendant possessed the marijuana for the purpose of delivery, rather than merely for personal use.

The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Defendant's argument that the evidence of the scale "was more prejudicial than probative" misstates the test for the admission of evidence under MRE 403. The test is not whether the evidence is more prejudicial than probative. All evidence is prejudicial or damaging to some extent. *Mills, supra* at 75. "It is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded. *Id.*

The police found the scale in the front pocket of defendant's sweatshirt. There was a sufficient connection between defendant and the small bags of marijuana found in the car. The scale was one of several facts relevant to the charge at issue to show that defendant possessed the marijuana found in the car for the purpose of delivery. The scale was highly probative of defendant's intent to deliver marijuana. The fact that the jury may infer intent to deliver from the evidence of the scale does not render the evidence unfairly prejudicial.

Similarly, the fact that, absent the evidence, the jury may infer that the driver owned the marijuana does not render the evidence unfairly prejudicial. The function of MRE 403 is to exclude matters of scant probative force, sought to be admitted for their prejudicial effect; it is not designed to enable the court to make a contest where there is little or none. *Mills, supra* at 75. We also reject defendant's argument that the scale was unfairly prejudicial because the marijuana was already weighed. The scale was related to weighing the marijuana, regardless of whether that may have already occurred.

Because the trial court did not abuse its discretion in admitting the evidence of the scale, defendant was not denied his right to a fair trial when the prosecutor introduced the evidence.

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Michael R. Smolenski